



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 131 OF 2015

DICKSON OMBIRO.....PLAINTIFF/RESPONDENT

VERSUS

THE TRUSTIES OF ASSOCIATION OF JEHOVAS WITNESS IN

EAST AFRICAN.....1ST DEFENDANT/RESPONDENT

WILLIAM CHEBET.....2ND DEFENDANT/APPLICANT

RULING

1. The plaintiff came before this court and vide an application dated **16/10/2018** seeking an order that pending the hearing and determination of this suit an order do issue that the access road connecting to the 2nd defendant's **Land Title Waitaluk/Mabonde Block 13 /Bikeke/1100** be opened forthwith.
2. The plaintiff is said to have blocked the road illegally yet the road exists on the map and the 2nd defendant has since been illegally prevented from accessing his said land.
3. It is alleged that by closing the road the plaintiff is interfering with the substratum of the main suit while it is still pending in court.
4. The application is supported by the sworn affidavit of the 2nd defendant in which the grounds above are reiterated.
5. I have examined the photographs filed by the 2nd defendant as annexures to his supporting affidavit. I have also examined the map for the area which is also an exhibit in the same affidavit.
6. Further, I have considered that the main prayer in the plaint seeks an order of permanent injunction against the defendants jointly and severally to restrain them from inter alia accessing their respective parcels through the plaintiff's private road or doing anything to interfere with the use of the private road that resulted from the subdivision of his **Parcel Number 1068**.
7. The road has been in use by the defendants before the suit. The suit was brought for the purpose of restraining the defendants from using it. This court has not pronounced itself on the status of the road in question.
8. I agree with the submission of the 2nd defendant that as long as the decision of this court has not been issued on the status of the said road, the action of the plaintiff seems to conclude the matter unilaterally.
9. In this court's view, allowing the defendants to use the road will maintain the status quo as the parties await the final decision of the court. I see no prejudice that the plaintiff would suffer if the orders sought were allowed. Even if he were to suffer any prejudice from the defendants' use of the road in future he is at liberty to apply for a suitable remedy to this court.
10. I find that the application dated **16/10/2018** has merits and I grant it in terms of **prayers (c) and (d)** thereof. The duty of reopening the road shall be incumbent on the plaintiff.
11. The costs of the application shall be in the cause.

Dated, signed and delivered at Kitale on this 22nd day of November, 2018.

MWANGI NJOROGE

JUDGE

22/11/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Teti for applicant

Mr. Khisa holding brief for Samba for respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

22/11/2018